SWAMI RAMANAND TEERTH MARATHWADA UNIVERSITY

NANDED

SOCIO-LEGAL STATUS OF THE DISABLED IN INDIA
PROMISES AND CHALLENGES

A Proposed Ph. D Synopsis in the Subject Law

Under the faculty of Law

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Introduction to Research Problem:-

Disability is defined by the Cambridge Advanced Learner's Dictionary & Thesaurus as a physical or mental condition that makes someone unable to act in a way that is considered usual for most people. It means incapacity or handicap. It is a condition that makes it more difficult for a person to do certain activities or interact with the world around him. The conditions or impairments may be cognitive, developmental, intellectual, mental, physical, sensory or a combination of multiple factors. Disability is a contested concept, with different meanings in different communities. The World Health Organization has proposed the definition of disability as follows: Disabilities is an umbrella term, covering impairments, activity limitations and participation restrictions. Disability is not just a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives. World Report on disability states that about 15 % of the world's population lives with some form of disability. It is observed that 2 % to 4 % of the disabled experience significant difficulties in functioning.

Universal Declaration of Human Rights 1948, affirms that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. It expressly affirms that all human beings are equal in dignity and rights. It prohibits discrimination against any person. It is necessarily implied that persons with disabilities constitute a part of human family and they are covered by the principle of equality. 1981 to 1992 was the UN " Decade of Disabled Persons". Article 1 of the Convention defines its purpose: to promote , protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.

The Economic and Social Commission for Asian and Pacific Region 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region which ultimately led to the enactment of The Persons with Disabilities (Equal Opportunities , Protection of Rights and Full Participation) Act , 1995 for persons with disabilities in India. This Act was later repealed by the Persons with Disabilities Act 2016.

The Act of 2016 was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities 2006.

Equality is a basic or fundamental feature of the Constitution of India which is regarded as the paramount source of legislation in India. Arts. 15 and 16 of the Constitution prohibit discrimination on certain grounds enumerated therein. It is true that disability is not mentioned as a ground of discrimination. However , the basic principle of equality covers persons with disabilities and as such discrimination against persons with disabilities is impliedly and necessarily prohibited by the Constitution. Right to life under Art. 21 of the Constitution is a fundamental right guaranteed to every person including a person with disability. This basic right becomes meaningless when persons with benchmark disabilities and from economically weaker section of the society are deprived of their basic needs of education and employment. The vexed question is whether legal empowerment as it is, gives freedom from basic wants or ensures life with dignity to persons with disabilities.

Those who may deny discrimination against persons with disabilities may say that disability is not a ground for discrimination in view of the language of Arts. 15 and 16. It may also be argued by some people that a disabled in the family is the focus of the family and the family takes special care of such person. This may be true as an exception. It is a fact that most of the persons with disabilities are from economically weaker class living in rural area. In the face of poverty and illiteracy, the families of persons with disabilities are not able to take proper care of the disabled. What is more important is that discrimination involves attitude and prejudices which operate in absence of faith in life values. In fairness to the cause of justice it will be useful to remind or remember the words of Robert L. Burgdorf Jr. who is a Disability Rights Scholar and legal advocate in America. He had prepared a draft which was published as The Americans with Disabilities Act Bill in 1988. It was the basis for the revised version which became the law on disability. He had remarked “The Americans with Disabilities Act, 1990, was a response to an appalling problem: widespread, systematic, inhumane discrimination against people with disabilities”. In 1971, a New York Judge described people with disabilities as the most discriminated (against) minority in the nation.

Two painful conditions are associated with a person with disability. The first is that disability materially affects the quality of life of such person and the second is exclusion of such person from the main stream of life because of social attitude and discrimination.

The legal empowerment of persons with disabilities by special legislation essentially implies and acknowledges the disturbing fact that the inherent dignity and human rights of such persons are ignored and threatened.

What legislation seeks is legal prohibition of discrimination and protection of threatened rights. Legal prohibition of discrimination is one thing but its elimination is quite another thing. It is said that law is an instrument of social transformation. This statement presupposes respect for law which is in essence command. If Law is inevitable and important , respect for the same is most important.

Importance of Research:-

Persons with disability form a class by themselves in every country. More than One billion people in the world live with some sort of disability. World report on disability shows that about 15 % of the world's population lives with some form of disability. Developing country like India, according to the census of 2011 there were 2.68 crore persons with one or other disability. It means about 3% to 4% Indian population belonged to the class of the disabled. 2-4 % of the disabled experience significant difficulties in functioning. In view of the illiteracy and unawareness prevailing to a large extent in the country, disability reported is much less than the actual number of persons disability. It is a matter of fact that, entire family is affected by one disabled person in family. Thus, total number of families affected is equal to total number of persons with disability. Persons with disability usually come from economically weaker sections of the society. People in general are indifferent towards persons with disability and social discrimination against such persons is too deep and real to be denied. The cause of the disabled assumes much importance because peace and progress of the families of such persons as also the society depend upon accommodating the persons with disability in to the social stream.

Respect for and implementation of the laws and schemes for persons with disability obviously is important. Certain obligations are cast upon the appropriate Government and or local authorities under the laws meant for protection of the rights of persons with disabilities. From the analysis of relevant data , it can be ascertained whether the special legislation for the disabled has worked to the extent desired or expected.

Research Objectives:-

Protection of the basic rights of persons with disabilities, abolition of discrimination on the ground of disability, educating such persons to realize their dignity and their inclusion in the social stream are the objectives for the study.

Scope of the Research work:-

The research covers persons with disabilities of different types residing in Marathwada region. Constraints involving finance and time have limited the scope of investigation. Sample size is limited but all 71 Taluka in 8 Districts of Marathwada region are covered for Sample. Data collection is through interview schedules as majority of the persons with disabilities are illiterate and from rural area. A questionnaire is framed to obtain relevant information from the Govt. offices concerned with welfare of persons with disabilities so far as Marathwada region is concerned.

Research Hypothesis:-

It is hypothesized that, right through centuries, the disabled have been oppressed marginalized and stigmatized in almost all societies. They constitute a section of the population, which is most backward least served and grossly neglected. Person with disability are the poorest of the poor and weakest of the weak, who have been socially, educationally and economically disadvantaged; thus having customarily denied their right to self-assertion, identity and development. Legal empowerment of persons with disabilities is significant step for protecting their rights. Hence, study proposes that the discrimination on the ground of disability may be eliminated only by education promoting respect for Constitutional values. Further, economic constraints of the State cannot be a valid ground to deny right of persons with disabilities in general and benchmark disabilities in particular, to live with dignity.

Research Methodology:-

Relevant data will be collected for Marathwada region. Doctrinal, and Non-doctrinal, Questionnaire and Interview method will be adopted for collecting sample data. The officers of varies Governmental, Nongovernmental departments, Special institutions, in Marathwada region, requested to furnish relevant information. The objective is to obtain all relevant information regarding the extent of implementation of the laws and Govt. schemes and difficulties if any, in the implementation. Questionnaire is

appended at appropriate place. Conclusion will be based upon the data for region. Both primary and secondary sources of Data will be availed.

Scheme of Chapterization :-

1. 'Introduction' :- First chapter deals with Introduction. It includes scope and importance of the research , Objectives, Hypothesis and Research Methodology.
2. 'Legislative and Constitutional Provisions' :- In this Chapter, provisions of Universal Declaration of Human Rights 1948 , Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region 1992,

The United Nations Convention on the Rights of Persons with Disabilities 2006, Relevant provisions of Constitution of India , Human Rights Act 1993, Persons with Disabilities (Equal opportunities full participation) Act 1995, The Mental Health Act 1987, The National Trust for Welfare of Persons with Autism, Cerebral Palsy , Mental Retardation and Multiple Disabilities Act 1999, Rights of Persons with Disabilities Act 2016 with rules, Government resolutions, circulars and notifications, enacted state laws and Judicial Precedents of Hon'ble Supreme Court and High Courts in India are analyzed are studied

3. 'Role of Governmental and Non-governmental Organizations' :- In this Chapter , the Role of Govt. and non-Govt. Organizations for persons with disabilities. various Govt. Schemes , Policies and Resolutions for persons with disabilities are considered and analyzed.
4. 'Implementation in Marathwada region':- This Chapter deals with data collected from 8 Districts of Marathwada Region of Maharashtra State. Data collection through interview schedules of some persons with different types of disabilities from each of the districts is analyzed. Relevant information obtained from the Govt. offices located in Marathwada Region concerned with welfare of persons with disabilities is considered for analyzed
5. 'Conclusions and Recommendations':- The last Chapter deals with Conclusions and Recommendations. Conclusions are based on analysis of data and study. Recommendations which seem expedient from the study are submitted.

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